

Special Civil Application No 9451 of 95

Date of decision: 22/01/96

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHUPENDRABHAI R PATEL

v.

DISTRICT MAGISTRATE, KHEDA AND OTHERS

DISTRICT MAGISTRATE, KHEDA AND OTHERS

Appearance:

=====
Mr.H.R.Prajapati for M/s. Thakkar Associates, Advocate
for the petitioner.
Mr.K.C.Shah, A.G.P. for respondents no.1 to 3.
Mr.B.B.Naik, Addl.Standing Counsel for Central Government
for respondent no.4.
=====

Coram : MR.JUSTICE J.M.PANCHAL
(January 22,1996)

ORAL JUDGEMENT:-

The order of detention dated September 7, 1995 passed by the District Magistrate, Kheda in exercise of powers conferred on him by sub-section (2) of section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 ("the Act" for short) against the petitioner is subject matter of challenge in the present petition which is filed under Article 226 of the Constitution.

The grounds of detention indicate that the detenu is holding licence to deal in petroleum products under the provisions of the Gujarat Essential Articles (Licensing Control and Stock Declaration) Order, 1981. The petitioner is running a Petrol Pump near village Vasad, Taluka : Anand on National Highway no.8. On June 26, 1995 an inspection of petrol pump was carried out by the officer of Civil Supplies Department. Sample of petrol was drawn and sent for analysis. The report of the Analyst made it clear that morning density was not as per the prescribed standard. On the basis of the materials placed before it, the detaining authority was satisfied that the detenu had adulterated high speed diesel and was acting in a manner prejudicial to the maintenance of supply of commodity essential to the community. The detaining authority, therefore, with a view to preventing the detenu from acting in a manner prejudicial to the maintenance of supply of commodity essential to the community, passed the impugned order of detention.

It is not in dispute that the procedural requirements enjoined by the Act and Article 22(5) of the Constitution have been complied with by the detaining authority, the Advisory Board and the State Government.

Several contentions have been urged by the learned Counsel for the petitioner while assailing validity of the order of detention. However, it is not necessary to refer to all of them except one which in my opinion merits acceptance.

Learned Counsel for the petitioner submitted that the detenu had made representation dated September 30, 1995 to the Central Government through the Superintendent, Bhuj Special Jail, Bhuj and as there is delay on the part of the Central Government in considering the representation, the continued detention of the detenu should be held to be illegal. This ground of challenge is raised in para-3(o) of the petition.

Dr.K.V.Jacob, Under Secretary in the Ministry of

Civil Supplies, Consumer Affairs & Public Distribution, Shastri Bhavan, New Delhi has filed affidavit-in-opposition on behalf of the respondent no.4 on November 29,1995. In para-4 of the said affidavit-in-reply it is stated that the representation dated September 30,1995 was received by the Central Government on October 6,1995. It is further stated in the said paragraph that after considering the contents of the representation, it was felt necessary that parawise remarks should be called for from the State Government and, therefore, by a communication dated October 11,1995 the State Government was asked to send parawise remarks on the representation of the detenu. It is also stated in the said paragraph that parawise comments were received from the State Government on November 17,1995 and the representation is under examination. Mr.B.B.Naik, learned Additional Standing Counsel for the Central Government, on instructions, has stated that the representation dated September 30, 1995 made by the detenu was considered by the Central Government on January 8,1996. From the facts which have been stated hereinabove it is evident that the detenu had made representation on September 30,1995 to the Central Government through the Superintendent,Bhuj Special Jail, Bhuj, which was received by the Central Government on October 6, 1995. The Central Government called upon the State Government to send parawise remarks on the representation of the detenu by a communication dated October 11,1995. The State Government sent parawise comments on the representation of the detenu, which were received by the Central Government on November 17,1995. Thereafter the representation of the detenu was considered by the Central Government on January 8,1996. Obviously, there is delay on the part of the Central Government in considering the representation after receipt of parawise comments from the State Government. Delay between receipt of parawise comments from the State Government and consideration of representation on January 8,1996 is not explained on behalf of the Central Government at all. On the facts and in the circumstances of the case and more particularly, in view of the unexplained delay in considering the representation by the Central Government, I am of the view that right of the detenu which is guaranteed under Article 22(5) of the Constitution, is infringed and the continued detention of the detenu has become illegal.

For the foregoing reasons, the petition succeeds. The continued detention of the detenu is held to be illegal. The respondents are directed to release the detenu immediately unless his presence is needed with

reference to any other case. Rule is made absolute
accordingly, with no order as to costs.
